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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 127

PRINTED REPRODUCTION OF TYPEWRITTEN BRIEFS FILED IN THE MICHIGAN SUPREME COURT BY:

1. PETITIONER IN THE STATE COURT IN SUPPORT OF THE STATE COURT PETITION FOR CERTIORARI.

2. RESPONDENT IN THE STATE COURT IN OPPOSITION TO THE STATE COURT PETITION FOR CERTIORARI.

INTERSTATE BRIEF & RECORD CO., 942 BEAUBIEN ST., DETROIT 26, MICHIGAN

STATE OF MICHIGAN

IN THE SUPREME COURT

RICHARDS GREENFIELD, INC., a Michigan corporation,

Plaintiff,

v.

HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A. F. of L.; HOTEL & RESTAURANT EMPLOYEES LOCAL UNION No. 705; CHEFS, COOKS, PASTRY CHEFS LOCAL UNION No. 234; MAX GAZAN, GEORGE ASHER, JAMES MACERONI, HARVEY MORRIS, ROGER FOSTER, JOHN DOE and RICHARD ROE,

Defendants.

No. 45,387.

MEMORANDUM BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

QUESTIONS:

I. Does a Chancery Court have jurisdiction over several parties charged with constructive contempt for violation of an injunction committed outside of the view and presence of the Court under Michigan Statutes Annotated, Sec. 27.513, where no proof of service of any process is filed in the cause?

The Court said, Yes.

The Petitioners say, No.

II. Does a Chancery Court aquire any jurisdiction to issue an order to show cause why several parties, some of whom are not even parties to the cause, upon a vague and general petition verified upon information and belief?

The Court said, Yes.
The Petitioners say, No.

III. Does a Chancery Court have jurisdiction to punish parties for alleged contempt of court committed outside of the view and presence of the Court without service of any affidavit, rule, petition, citation, or order to show cause upon such persons?

The Court said, Yes.
The Petitioners say, No.

IV. Does a court have jurisdiction to punish parties for contempt not in the view and presence of the court in a proceeding in which said parties are not named as parties defendant nor as respondents in an order to show cause for such contempt?

The Court said, Yes.
The Petitioners say, No.

V. Does a Court have jurisdiction to punish organized labor unions for alleged contempt arising out of actions of its members committed outside of the view and presence of the Court, when the convictions of said individual members for said alleged actions are illegal and void?

The Court said, Yes.
The Petitioners say, No.

VI. Did the Court err in refusing to strike testimony of an oral and sound-recorded nature in violation of their constitutional rights of free speech?

The Court said, No.
The Petitioners say, Yes.

VII. Did the Court err in ordering the termination of all picketing and the removal of all union personel from the premises where a bona fide labor dispute was in progress, thus depriving the parties of their constitutional right of free speech?

The Court said, No.
The Petitioners say, Yes.

ARGUMENT

I.

DOES A CHANCERY COURT HAVE JURISDICTION OVER SEVERAL PARTIES CHARGED WITH CONSTRUCTIVE CONTEMPT FOR VIOLATION OF AN INJUNCTION COMMITTED OUTSIDE OF THE VIEW AND PRESENCE OF THE COURT UNDER MICHIGAN STATUTES ANNOTATED, SEC. 27.513, WHERE NO PROOF OF SERVICE OF ANY PROCESS IS FILED IN THE CAUSE?

This application for a Writ of Certiorari seeks to review the conviction of two organized labor unions and four individual members thereof for alleged contempt of court not in the view and presence of the Court. There is not one single element or allegation of any contempt within the presence of the Court. The applicable statute in these proceedings therefore is *Michigan Statutes Annotated, Sec. 27.513,* which reads as follows:

> "27.513. Same; misconduct not in presence *of court.* Sec. 3. When such misconduct is not so committed, the court shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defense, except in cases of disobedience to any rule or order requiring the payment of money, and of disobedience to any subpoena. (C. L. '29, §13912; C. L. '15, §12270)."

The records in the cause and the calendar entries of the trial court show that no proof or affidavit of service of any petition, affidavit, order to show cause, citation, or attachment upon any of the parties was ever filed.

The statute as to such affidavits and service upon the parties speaks for itself. No authority is required as to the strict construction of a penal statute. Strict construction is likewise essential in contempt proceedings wherein defendants are not entitled to jury trials.

II.

DOES A CHANCERY COURT ACQUIRE ANY JURISDICTION TO ISSUE AN ORDER TO SHOW CAUSE WHY SEVERAL PARTIES, SOME OF WHOM ARE NOT EVEN PARTIES TO THE CAUSE, UPON A VAGUE AND GENERAL PETITION VERIFIED UPON INFORMATION AND BELIEF?

In the instant case an attempt to comply with the statute was undertaken by the filing of a petition for an order to show cause. This petition was verified by Sidney Smith upon information and belief. In *Campbell v. Judge of Recorder's Court,* 244 Mich. 165, at page 167, this Court stated:

> "The statute (3 Comp. Laws 1915, §12270) requires in case of misconduct not committed in the immediate view and presence of the court, that the court before proceeding 'shall be saitsfied by due proof by affidavit of the facts charged.'
>
> "In *Montgomery v. Muskegon Circuit Judge,* 100 Mich. 436, it is said that the—'charges must be supported by positive statments in affidavits made by persons having knowledge of the facts,—*that statements on information and belief are not sufficient.*' "

The vague and general nature of the petition speaks for itself. From the petition it is impossible to determine which defendant is accused of what act of contempt. The generality of the petition is illustrated by the fact that the order to show cause issued thereon names a number

of alleged contemnors who were not even parties to the cause, and that, of the six parties convicted therein, two of the petitioners herein were not even named as defendants in the cause nor respondents to the order to show cause.

To further attempt to comply with the statute, an affidavit was attached to the petition which fails entirely to associate the alleged contempt with any of the petitioners herein. The affidavit was so irrelevant to the petitioners herein that the Trial Judge commented in his formal opinion that the incident therein outlined was not the concern of this particular hearing.

We repeat that under the statute such an affidavit is jurisdictional and a total variance between the affidavit and the sentences for contempt is fatal.

As to a charge of contempt based upon incidental facts which did not occur in the presence of the Court, this Court stated in *In re Gilliland*, 284 Mich. 604, at page 613, as follows:

> "The judge unquestionably has the right summarily to punish one for illegal practice of the law in his presence. However, when the proof on the charge of contempt for illegal practice partly depends upon practices which took place outside of the court and prior to the hearing, the contemner is entitled first to have proper charges preferred against him so that he may answer them and prepare his defense. This was not done and, therefore, the conviction as to this contempt is set aside."

To the same effect, *In re Ventchell*, 279 Mich. 690 wherein this Court stated, at page 691:

"The alleged violation of the restraining order was not committed in the immediate view and presence of the court and therefore 3 Comp. Laws, 1929, Sec. 13911, is inapplicable.

"Sections 13912 and 13914, 3 Comp. Laws 1929, are respectively as follows:

> " 'When such misconduct is not so committed, the court shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defense, except in cases of disobedience to any rule or order requiring the payment of money, and of disobedience to any subpoena.'
>
> " 'In all cases, other than that specified in the last section, the court shall either grant an order on the accused party, to show cause at some reasonable time, to be therein specified, why he should not be punished for the alleged misconduct, or shall issue an attachment to arrest such party, and to bring him before such court, to answer for such misconduct.'

"Section 13912, as quoted, provides the foundation for punishment for contempts not committed within the immediate view and presence of the court. Proof of the alleged misconduct must be submitted by affidavit. The court, upon being satisfied from said affidavit of the commission of the misconduct, may thereupon issue an order for the accused to show cause why he should not be punished therefor, or issue an attachment to arrest the accused. 3 Comp. Laws 1929, Sec. 13914.

"In the instant case there was a total absence of compliance with the statutory provisions. The requirement that an affidavit be presented setting forth the alleged misconduct was ignored. Neither was an order to show cause nor an attachment to

arrest issued. Under the facts it must be held that petitioners were deprived of their liberty without due process of law. *In re Wood*, 82 Mich. 75; *In re Smilay*, 235 Mich. 151.

"The order of contempt is set aside and vacated and petitioners discharged."

In *Cooks v. United States*, 267 U. S. 517, the leading case on due process of law in constructive contempt cases, we find the following language:

"The rule should have contained enough to inform the defendant of the nature of the contempt charged. See *Hollingsworth v. Duane*, Wall. Sr. 141, Fed. Cas. No. 6,617. Without any ground shown for supposing that a rule would not have brought in the alleged contemners, it was harsh under the circumstances to order the arrest."

As to the necessity and requirements of such affidavits, we will refer in an Amended Brief to:

2 A. L. R. 225;
118 A. L. R. 155.

III.

DOES A CHANCERY COURT HAVE JURISDICTION TO PUNISH PARTIES FOR ALLEGED CONTEMPT OF COURT COMMITTED OUTSIDE OF THE VIEW AND PRESENCE OF THE COURT WITHOUT SERVICE OF ANY AFFIDAVIT, RULE, PETITION, CITATION, OR ORDER TO SHOW CAUSE UPON SUCH PERSONS?

As has been hereinbefore stated, the record in this cause contains no affidavit of any service of any process of any kind upon any of the petitioners. In the petition for Writ of Certiorari filed herein the petitioners Chefs,

Cooks, and Pastry Chefs Local Union #234, Pearl Craig, and George Asher, show that they were not served with any papers. The fact appears that Pearl Craig and Roy Stringari were not even named in the rule or order to show cause.

This Court stated *In re Na Lepa,* 298 Mich. 310, at page 312, as follows:

> "We have carefully examined the record and briefs in this cause and find that no charge was filed against petitioner. He was not informed of the nature of the charge against him. He was not served with any process or given an opportunity to defend himself. In the case at bar, a part of the transaction charged as contemptuous transpired 'in the immediate view and presence of the court,' but other transactions occurred outside the hearing of the court. The admitted and known facts committed in the presence of the court were not such as would constitute a violation of 3 Comp. Laws 1929, §13911 (Stat. Ann. §27.512), nor was the procedure such as to comply with 3 Comp. Laws 1929, §13912 (Stat. Ann. §27.513). Under the facts, it must be held that petitioner was deprived of his liberty without due process of law,
>
> "The order of contempt must be set aside and vacated, and the petitioner discharged without prejudice. No costs."

To the same effect, *In re Smilay,* 235 Mich., at page 156:

> "We must conclude that plaintiff was convicted and deprived of his liberty without due process of law. The offense with which he was charged was not committed in the presence of the court. He is therefore entitled to be informed of its nature, and to be given time to prepare his defense, and secure the assistance of counsel. He denied he had vio-

lated the order of the court, and he could not be found guilty until the issue of fact thus made had been disposed of. He was entitled, also, to produce witnesses in his own behalf.

"His conviction was too peremptory, and he was deprived of constitutional rights which void the entire proceedings. *Cooke v. United States,* 267 U. S. 517 (45 Sup. Ct. 390)."

The entire subject of due process of law in contempt proceedings was very thoroughly review by the United States Supreme Court in *Re Oliver,* 333 U. S. 257, in which the Court said:

"Except for a narrowly limited category of contempts, due process of law as explained in the Cooke Case requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public. If some essential elements of the offense are not personally observed by the judge, so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires, according to the Cooke case, that the accused be accorded notice and a fair hearing as above set out."

IV.

DOES A COURT HAVE JURISDICTION TO PUNISH PARTIES FOR CONTEMPT NOT IN THE VIEW AND PRESENCE OF THE COURT IN A PROCEEDING IN WHICH SAID PARTIES ARE NOT NAMED AS PARTIES DEFENDANT NOR AS RESPONDENTS IN AN ORDER TO SHOW CAUSE FOR SUCH CONTEMPT?

This question is presented separately because it involves the rights of some of the parties convicted in this cause who were not parties to the original proceedings and were not even named in the so-called order to show cause. Pearl Craig was never named in these proceedings in any capacity other than in her appearance as a witness. She was never served with any form of process. If she had even seen any of the pleadings or documents in the case she would have seen nothing but a chancery entitlement. There was nothing in any of these proceedings to place her on notice that she was being tried for constructive contempt. Certainly under these circumstances there was no compliance with the rules laid down for due process of law under the Fourteenth Amendment to the Constitution of the United States.

> *Cooke v. United States*, 267 U. S. 517;
> *In re Oliver*, 333 U. S. 257.

The third headnote in *Gompers v. Buck's Stove & R. Co.*, 221 U. S. 418, is pertinent in this connection;

> "A punitive sentence appropriate only to a proceeding at law for criminal contempt where the contempt consisted in doing that which had been prohibited by an injunction could not properly be imposed in contempt proceedings which were instituted, entitled, tried, and, up to the moment of sentence, treated, as a part of the original cause of equity."

In the body of the opinion by Mr. Justice Lamar we find the following language:

> "In the first place the petition was not entitled 'United States v. Samuel Gompers, et al.' or 'In re Samuel Gompers, et al.,' as would have been proper, and, according to some decisions, necessary, if the proceedings had been at law for criminal contempt. This is not a mere matter of form, for manifestly every citizen, however unlearned in the law, by mere inspection of the papers in contempt proceedings ought to be able to see whether it was instituted for private litigation or for public prosecution, whether it sought to benefit the complainant or vindicate the court's authority. He should not be left in doubt as to whether relief or punishment was the object in view. He is not only entitled to be informed of the nature of the charge against him, but to know that it is a charge, and not a suit. *United States v. Cruickshank*, 92 U. S. 542, 559, 23 L. ed. 588, 593."

V.

DOES A COURT HAVE JURISDICTION TO PUNISH ORGANIZED LABOR UNIONS FOR ALLEGED CONTEMPT ARISING OUT OF ACTIONS OF ITS MEMBERS COMMITTED OUTSIDE OF THE VIEW AND PRESENCE OF THE COURT, WHEN THE CONVICTIONS OF SAID INDIVIDUAL MEMBERS FOR SAID ALLEGED ACTIONS ARE ILLEGAL AND VOID?

The two petitioning organized labor unions, Local #705 and Local #234, submit that in addition to the foregoing legal defects in the jurisdiction and procedure of the Trial Court in holding them guilty of criminal contempt, such contempt charge against them is necessarily based entirely upon the actions of their members. Consequently, it must follow that if the convictions of their respective

members are fatally defective, as herein set forth, then the convictions of the organizations are likewise fatally defective. This question will be amplified in an amended brief to be filed herein upon the date of the hearing.

VI.

DID THE COURT ERR IN REFUSING TO STRIKE TESTIMONY OF AN ORAL AND SOUND-RECORDED NATURE IN VIOLATION OF THEIR CONSTITUTIONAL RIGHTS OF FREE SPEECH?

VII.

DID THE COURT ERR IN ORDERING THE TERMINATION OF ALL PICKETING AND THE REMOVAL OF ALL UNION PERSONNEL FROM THE PREMISES WHERE A BONA FIDE LABOR DISPUTE WAS IN PROGRESS, THUS DEPRIVING THE PARTIES OF THEIR CONSTITUTIONAL RIGHT OF FREE SPEECH?

For the purposes of brevity, Questions VI and VII will be discussed under one heading, as they both involve questions of freedom of speech under the First Amendment to the Constitution of the United States. The basic right to picket, to advise customers of the relationship between employer and employee, to attempt to induce customers not to patronize, to publicize the dispute, and similar rights are established in *Thornhill v. Alabama*, 310 U. S. 88, under the right of free speech as constitutionally guaranteed. To the same effect is the case of *Carlson v. California*, 310 U. S. 106.

In *Cafeteria Employees v. Angelos*, 320 U. S. 293, the right of workers engaged in a bona fide labor dispute are outlined in greater detail. The following language of Mr. Justice Frankfurter is pertinent to the present questions:

"And to use loose language or undefined slogans that are part of the conventional give and take in our economic and political controversies—like 'unfair' or 'fascist'—is not to falsify facts.";

and finally as follows:

"The present situation is thus wholly outside the scope of the decision in *Milk Wagon Drivers Union v. Meadowmoor Dairies,* 312 U. S. 287, 85 L. Ed. 836, 61 S. Ct. 552, 132 A. L. R. 1200. There we sustained the equity power of a state because the record disclosed abuses deemed not episodic and isolated but of the very texture and process of the enjoined picketing. But we also made clear 'that the power to deny what otherwise would be lawful picketing derives from the power of the states to prevent future coercion. Right to free speech in the future cannot be forfeited because of disassociated acts of past violence.' 312 U. S. at 296, 85 L. Ed. 842, 61 S. Ct. 552, 132 A. L. R. 1200. Still less can the right to picket itself be taken away merely because there may have been isolated incidents of abuse falling far short of violence occurring in the course of that picketing."

RELIEF

It is therefore respectfully submitted hat Writ of Certiorari should issue and the relief prayed in the petition therefor be granted.

Respectfully submitted,

Sgd. GEORGE BRETT SHAEFFER,
Attorney for Petitioner,
2480 Penobscot Building,
Detroit 26, Michigan.

STATE OF MICHIGAN

IN THE SUPREME COURT

RICHARDS GREENFIELD, INC., a Michigan corporation, *Plaintiff,* v. HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A. F. of L.; HOTEL & RESTAURANT EMPLOYEES LOCAL UNION No. 705; CHEFS, COOKS, PASTRY CHEFS LOCAL UNION No. 234; MAX GAZAN, GEORGE ASHER, JAMES MACERONI, HARVEY MORRIS, ROGER FOSTER, JOHN DOE and RICHARD ROE, *Defendants.*	No. 45,887.

PLAINTIFF'S MEMO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

In Petitioners' Memo Brief they propound Seven (7) questions numbered I through VII. To each of these questions they state "The Court said 'Yes' ". "The Petitioners say, 'No' ". The plaintiff does not agree at all that from the record these questions are properly the questions involved in this proceeding. The Petitioners have not stated the facts accurately as premises for some of the questions and have confused the issues as to others.

However, without conceding that the questions as framed by petitioners are properly the issues involved, plaintiff's Brief will deal with the matters referred to in the several questions framed by the petitioners.

QUESTION I

Framed by Petitioners

This question is framed by Petitioners as if the *Proof of Service* is the only factor which determines the jurisdiction of the Court over these petitioners. The Order to Show Cause (Petitioners' Exhibit "E") specifically provides:

> "It is further ordered that a copy of this order to show cause be served upon said defendants, their officers, agents, employees, pickets and confederates, by serving a copy thereof upon the offices of said defendants Hotel & Restaurant Employees' Local No. 234, and upon the office of their attorney, Leon Cousens, Esquire, on or before midnight, September 10, 1951."

It is nowhere denied that service of the Order to Show Cause upon these Petitioners was made in accordance with the above direction of the Circuit Court. Moreover, Leon Cousens, who was the attorney of record at that time for the two defendant unions, upon whom had been served a copy of the sworn petition and sworn affidavit, and order, entered his appearance and filed the answer of the two defendant unions in the files and records of the Circuit Court (Petitioners' Exhibit "F"). Petitioner Max Gazan entered a special appearance by Moe Wolfgang, his attorney, and later changed it to a general appearance and

adopted the answer of the two Local Unions as his own, in open Court, upon the record of the hearing.

The other Petitioners in this cause, George Asher and Pearl Craig, together with many other officers, employees, business agents, picket captains and pickets, appeared in person in open Court in response to the Order to Show Cause, although no written appearance was entered for any of them and they remained in Court, saw and heard the witnesses against them, produced witnesses in their behalf, and took the witness stand themselves to explain, deny or justify their conduct which the plaintiff claimed and the Court found, after hearing testimony of witnesses over a period of nearly three (3) months, was in violation of law and of the Court's injunction.

It is elementary that no Proof of Service needs to be filed where the respondent enters his appearance either in person or by attorney, and that by appearing in response to an order to Show Couse he waives service of the Order, or the filing of a Proof of Service of such Order. The only essential requirement is that the respondent receive reasonable notice of the charges made against him and that he have a reasonable opportunity to meet them by way of defense or explanation. *Cooke v. United States,* 267 U. S. 517, 536, in which Chief Justice Taft said:

> "When the contempt is not in open Court, however, there is no such right or reason in dispensing with the necessity of charges and the opportunity of the accused to present his defense by witnesses and argument. The exact *FORM of the procedure in the prosecution of such contempts is not important.* The Court in *Randall v. Brigham,* 7 Wall. 523, 540, in speaking of what was necessary in proceedings again an attorney at law for malpractice said:

" 'All that is requisite to their validity is that, when not taken for matters occurring in open court in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense. *The manner in which the proceeding shall be conducted, so that it shall be without oppression or unfairness IS A MATTER OF JUDICIAL REGULATIONS.'*

"*Due process of law* therefore, except of that committed in open court, requires that the accused *should be advised of the charges and have a reasonable opportunity* to meet them by way of *defense or explanation.* We think this includes the assistance of counsel if requested, and the right to call witnesses to give testimony relevant either to the issue of complete exculpation or in extenuation of the offense and in mitigation of the penalty to be imposed." (Italicizing ours.)

QUESTION II

Framed by Petitioners

This entire cause proceeds on the wholly erroneous and unfounded promise that the Petition on which the contempt proceedings were based *"was verified by Sidney Smith upon information and belief".* Examination of this sworn Petition discloses that it was the positive personal statements of fact by Sidney Smith and NOWHERE in the entire petition is there any reference to "information and belief"—unless Petitioners refer to the statement in the jurat "that the same is true of *HIS OWN KNOWLEDGE,* except as to those matters stated to be upon information and belief." It is respectfully submitted again that no-

where in the petition is it "therein stated to be upon information and belief"!

If perhaps, the Petitioners were laboring under the erroneous impression that the statements sworn to by Mr. Smith as a basis for the Order to Show Couse for Contempt were in the *FORM OF VERIFIED PETITION* rather than in the *FORM OF AFFIDAVIT* objection is without merit. In *Campbell v. Judge of Recorders Court,* 244 Mich. 165, this Honorable Court said, at *page 168:*

> "There is objection that the facts here are set forth in the form of verified petition rather than in the form of affidavit. The objection is technical, and we think, without substance. *In re McHugh,* 152 Mich. 505."

Judge Moynihan was "satisfied by due proof", as the *Statute, Sec. 27.513, Mich. Stat. Ann.,* sets forth, by the sworn petition of Sidney Smith, that the facts stated in said sworn petition, which was not upon information and belief, justified the issuing of the Order to Show Cause for Contempt.

On pages 3 and 4 of their Brief, Petitioners quote from *Montgomery v. Muskegon Circuit Judge,* 100 Mich. 436. We have no quarrel with this quotation but respectfully submit it does not apply to the case at Bar because the petition in this case was *NOT* on "information and belief". *In Campbell v. Judge of Recorders Court,* 244 Mich. 165, this Honorable Court itself, *pages* 167, 168, repeated the same quotation from *Montgomery v. Muskegon Circuit Court Judge, supra,* but also added, on *page 168:*

> "and it was also held in that case respecting contempts *that the decision of the trial judge—*
>
> > 'As to whether there was sufficient basis for issuing the order to show cause *can only be re-*

versed in case of a total absence of a showing of facts justifying such action.' (Italicizing ours.)

"A chief reason for the rule that the affidavit must be made positively and as of knowledge is that the public be entitled to the protection afforded by the penalties imposed for false swearing. *2 A. L. R.* 226."

In the annotations to *2 A. L. R., page 225,* referred to by this Honorable Court in the *Campbell case, supra,* it is said:

"It is well settled that cases of contempt not committed in the immediate view or presence of the Court must be brought to the attention of the Court by a statement of the facts by persons who witnessed them or have knowledge of them *(Sec. 6 R. C. L. Title: Contempt, page 531),* and the rule seems to be uniformly recognized that this statement must be made under oath, either *in the form of an affidavit or by some other sworn statement."* (Citing many cases.) (Italicizing ours.)

Moreover, it is stated at *2 A. L. R.,* page 236, that:

"It has been held that a failure to object in proper time to a petition in contempt proceedings, on the ground that it is not sworn to, amounts to a waiver of the defect and the contemnor may not later object to the jurisdiction on that ground. *Sona v. Aluminum Castings Co.,* 214 Fed. 936."

To the same effect are in re *Odum* 133 N. G. 250; *Atchison T & SFR Co., v. State,* 35 Okla. 532; *State v. Frew,* 24 W. Va. 416 and re *Cheeseman,* 49 N. J. L. 115. In these cases it is uniformly held that:

"Where the accused answers without objecting to the absence of a preliminary affidavit, he waives his right."

and:

> "That the defect if any, was waived by answering to the information without moving to quash or set it aside."

and:

> "The contemnor waived any rights he might have had by *being sworn at his request, and making answer in that form to the charge.*" (Italicizing ours.)

To the same effect is the annotation in *118 A. L. R.* at page 156, which cites *Campbell v. Judge of Recorder's Court,* 244 Mich. 165, as authority for this statement.

It is submitted that the cases cited on pages 4, 5 and 6 of Petitioners' Brief do not at all support their contention. In *re Ventchell,* 279 Mich. 690 it is stated:

> "The petitioneres were *summarily* brought before the Circuit Court and adjudged to be in contempt thereof for violation of said restraining order and committed to the County Jail for a period of thirty days each. Said judgment was imposed without presentation to the court of an affidavit reciting the alleged acts of misconduct, without Order to Show Cause, or without attachment having been issued."

In the case at Bar, a lengthly sworn petition was filed which satisfied the trial judge so that he issued an Order to Show Cause which was served upon all the petitioners in the manner directed therein. All the Petitioners appeared in person and by attorneys and the defendant unions, without any question of doubt, acting on behalf of themselves and the officers, agents, pickets, business agents, etc., including the three individual Petitioners, filed sworn written answers as did Petitioner Max Gazan, who, in effect, adopted these sworn written answers. The

other two Petitioners, filed sworn written answers as did Petitioner Max Gazan, who in effect, adopted these sworn written answers. The other two Petitioners appeared in person at the time and place designated for the hearing on the Order to Show Cause, were fully apprised in open court through weeks of hearings with what they and their fellow officers, business agents, pickets and picket captains were charged, heard these charges against them from the witness stand, took the witness stand to deny, explain or justify their violations of the court's injunction and under the direction of the three attorneys provided by the defendant unions, produced scores of witnesses during this lengthy hearing. For Petitioners to cite the *Ventchell case, supra*, with its *summary* conviction and imprisonment, is to do violence to logic and justice.

QUESTIONS III AND IV

Framed by Petitioners

That questions III and IV raise substantially the same issue, to-wit: the query as to whether persons who are not named as parties defendant, nor by specific name as respondents, can be held accountable to the charge of contempt. These questions apply solely to George Asher and Pearl Craig. These questions ignore the facts of the case at bar, namely that George Asher was a member of Local Union #705, a business representative thereof and a picket captain at plaintiff's place of business. Pearl Craig was a member, employee and a picket of Local Union #705, whose conduct the testimony disclosed, and Judge Moyihan found, to be especially vicious and reprehensible. Both of them were referred to and included in the petition for

Order to Show Cause as "officers, agents, employees pickets and confederates" of the defendant unions and the Order to Show Cause specifically designated that service upon them of the petition and order to Show Cause was to be effected by service upon the unions and Leon Cousens, their attorney, In response to this Order to Show Cause, these two Petitioners, George Asher and Pearl Craig, along with a horde of other business representatives, pickets, picket captains and officers of defendant unions, appeared freely and voluntarily, in open court, on the return date of said Order to Show Cause and on each adjournment thereof, heard specifications of the charges made against them of violations of the injunction; sat through weeks of hearings, counselled and conferred with three attorneys provided by the unions; heard scores of witnesses from the witness stand describe in minutest detail their and their confederates' specific acts which were in violation of law and of the injunction; produced witnesses to explain, deny or justify their conduct, and under the direction of the three attorneys provided by the union, each of them took the stand for a period of several days to deny, explain or justify their conduct which it was charged was illegal and contemptuous. Both of them had been present also in court during the application for the injunction, and were fully aware of its terms, provisions and conditions.

Both of them, George Asher and Pearl Craig, testified also that after the injunction was signed it had been read and explained to them by their attorney, Leon Cousens and by the picket captains on the picket line, respectively.

George Asher and Max Gazan were named specifically as parties defendant in the original suit; Pearl Craig was

included in the terms of the injunction which was directed to "the officers, agents, employees and pickets of said defendant unions". The contention of Petitioners in question III and IV that the court did not have jurisdiction over Pearl Craig and George Asher to punish them for contempt on the ground that the former was not named as a party defendant or that both of them were not personally served with copies of the petition and Order to Show Cause is untenable.

In 12 American Jurisprudence, page 407, it is said:

> "The violation or disobedience of an injunction order issued by a court having jurisdiction in the matter, when committed by a party to the injunction suit or by a third party, having actual notice, is a contempt of court and is punishable as such by the tribunal issuing the order; summary punishment therefor is not prohibited by the constitutional right to trial by jury. This rule is not confined to parties to the injunction. One who is not a party to the injunction suit, but who is within the class of persons whose conduct is intended to be restrained or who acts in concert with a party litigant or with a third party, is guilty of contempt. Persons who act as agents, servants, associates, or confederates of parties to the injunction suit may be held guilty of contempt in doing acts forbidden by the injunction order."

In *15 A. L. R.* at page 389 are listed numerous cases in support of the statement that:

> "There are numerous cases which hold that persons though not parties to the injunction suit who act as the agents or servants or associates or confederates of parties to the suit in violating the injunction, are guilty of contempt."

In *Re McHugh*, 152, Mich. 505, two attorneys had failed to appear in Recorders Court for the City of Detroit to represent their client, who was charged with murder, upon the trial date, alleging that they were too ill to come into court. It developed that both of them had packed their suitcases and gone to Canada. An attachment was issued for their arrest for contempt, (p. 510):

> "and no petition or affidavit was presented to the court as a foundation for the proceedings • • • The respondents voluntarily appeared in court and were given the same opportunity to make their defense that they would have had upon the filing of a petition or affidavit and the issuance of an order to show cause. They were not seized upon the capias but came directly from a foreign country into the court and voluntarily submitted to its jurisdiction. It should require no argument to show that they had waived all irregularities in initiating the proceedings. The following authorities are directly in point: *Moore's Case*, 63 N. C. 397, *Hawkins v. State*, 125 Ind. 573; *In re Savin*, 131 U. S. 267; *Randall v. Brigham*, 7 Wall. (U. S.) 523, 540."
>
> "In *Randall v. Brigham* it is said:
>
> 'He (the respondent) was afforded ample opportunity to explain the transaction and vindicate his conduct. He introduced testimony upon the matter, and was sworn himself. It is not necessary that proceedings against attorneys for malpractice, or any unprofessional conduct, should be founded upon formal allegations against them. Such proceedings are often instituted upon information developed in the progress of a cause; or from what the court learns of the conduct of the attorney from its own observation. Sometimes they are moved by third parties upon affidavit; and sometimes they are taken by the court upon

its own motion. All that is requisite to their validity is that, when not taken for matters occurring in open court in the presence of the judges, notice should be given to the attorney of the charges made and opportunity afforded him for explanation and defense. The manner in which the proceedings shall be conducted, so that it be without oppression or unfairness, is a matter of judicial regulation.'

"The court in *Re Savin, supra*, quoted the above language with approval, and said:

'So, in the present case, if the appellant was entitled of right, to purge himself under oath, of the contempt, that right was not denied to him; for it appears from the proceedings in the district court, made part of the petition for *habeas corpus*, not only that he was informed of the nature of the charges against him by the testimony of Flores, taken down by a sworn stenographer at the preliminary examination, but that he was present at the hearing of the contempt, was represented by counsel, testified under oath in his own behalf, and had full opportunity to make his defense.

'Our conclusion is that the district court had jurisdiction of the subject matter, and of the person, and that irregularities, if any, occurring in the mere conduct of the case, do not affect the validity of its final order.'

"If the respondents had refused to appear in court, as was the case in *Re Wood*, 82 Mich. 75, or if they had been arrested upon the capias and had denied the jurisdiction of the court for the reason that no affidavit or petition was presented to the court setting forth the facts, the respondents would have been in position to raise this question, but their conduct waived it. They voluntarily placed them-

> selves in precisely the same position as they would have been if the proceeding had been such as they now contend was necessary."

In *re McHugh, supra,* is quoted with approval in the Campbell case hereinabove cited, 244 Mich. 168.

The cases cited by Petitioners' Brief, pages 7, 8 and 9 are not in point:

In *re NaLepa,* 298 Mich. 310 was a case in which the lower court in his return admitted that he had been in error in punishing the Petitioners summarily as if the offense had been committed in the presence of the court and no opportunity was afforded him to say a word in his defense.

In *re Smilay,* 235 Mich. 151, the petitioner claimed:

> "that the conviction and sentence were erroneous because there was no proper affidavit upon which to base an Order to Show Cause; that he was given no notice as provided by statute; that he denied violating the order but was confronted by no witnesses who testified he had; that he was not represented by counsel nor given time to employ one; that he did not know his rights, nor was he advised concerning them or given time to prepare his defense; in short, that he was sentenced without due process of law."

In *re Oliver,* 333 U. S. 257, petitioner was a grand jury witness in Michigan who claimed that he had been denied an opportunity to even learn what the charges against him were, to be confronted with witnesses against him, or time to obtain advice and defense by counsel.

It is respectfully submitted that the mere reference to the facts of the three cases cited in Petitioners' Brief makes it immediately apparent that the facts of the case

at Bar are entirely different. After personally, freely and voluntarily appearing in open court with the three attornys provided by the defendant unions upon the return day and each adjournment of the Order to Show Cause; where the trial court leaned over backward to give the Petitioners so much of the valuable time of the courts as to permit them to summon scores of witnesses over a period of time of nearly three months this hearing consumed. The Petitioners can hardly be heard to say they were not given the time or opportunity to present a defense nor to say that they were not cognizant of the fact that they, and their confederates were individually being charged with violation of the court's injunction. The contention which they now indulge that they were present in court merely as witnesses for the unions or that the three attorneys with whom they were counseling or cooperating did not represent them individually, but merely represented the unions, does violence to the facts. The present counsel for the Petitioners, George Brett Shaeffer, Esquire, was the attorney formally representing the local union to which these two Petitioners belong. Mr. Shaeffer, learned counsel that he is, certainly cannot be heard to say that the Order to Show Cause did not include these two Petitioners, George Asher and Pearl Craig, in the language of the Order:

> "It is hereby ordered that the defendant Hotel and Restaurant Employees Local Union No. 705, and the Chefs, Cooks, Pastry Chefs Local Union No. 234, and their officers, agents, employees, pickets and confederates * * * BE AND APPEAR before this Honorable Court on Friday, September 14, A. D. 1951, at 2:00 * * * to show cause, if any they have, why the defendants and their individual officers, agents, employees, pickets and confederates

> should not be punished for contempt of court in disobeying and violating the injunction of this Honorable Court * * *," etc.

It is respectfully submitted it would be putting a severe strain upon the credulity of this Honorable Court for petitioners to claim that throughout the months which this hearing consumed and while petitioners' present counsel, George Brett Shaeffer, Esquire, and his co-counsel, were in constant conference with these Petitioners and other officers, business agents, picket and picket captains, they did not have an opportunity to advise these Petitioners that they were being personally charged with violation of the court's injunction.

The attention of this Honorable Court is respectfully called to the following quotation from one of the cases cited on page 7 of Petitioners' Brief: In *re Oliver*, 333 U. S. 257, *at page 273*, where the court said:

> "Failure to afford petitioner a *reasonable opportunity* to defend himself against the charge * * * was a denial of due process of law. A person's right to reasonable notice of a charge against him and an opportunity to be heard in his defense—a right to his day in court—are basic in our system of jurisprudence and these rights include as a minimum a right to examine the witnesses against him, to offer testimony, and to be represented by counsel."

No fair reading of the record in this case where Circuit Judge Joseph A. Monyihan, setting aside all other business of the court, gave unstintingly of his time and patience to afford these Petitioners their day in court, full and ample opportunity "to examine the witnesses against them, to offer testimony, and to be represented by counsel". The

voluntary appearance of these Petitioners in open court and hearing repeatedly the charges made against them by a score of witnesses gave them "reasonable notice of the charge against them". Their production of a score of witnesses to deny, explain, or justify their conduct and their spending an aggregate of six or seven days on the witness stand among them—gave them full and ample "opportunity to be heard in their defense". Thus it is submitted, Petitioners have been given every possible "reasonable opportunity to defend themselves against the charges", which the United States Supreme Court outlined in the quotation above cited from 333 *U. S. at page 273.*

QUESTION V

Framed by Petitioners

The "issue" raised in Question V of Petitioners' Brief, and the "argument" drawn therefrom, is hardly worthy of the name; certainly, Petitioners cannot be serious in propounding such a theory! No authorities are cited and needless to say, Petitioners can find none! This "issue" and "argument" it is respectfully submitted, shows the glaringly vexatious and delaying nature of this entire proceeding. The mere statement that a principal cannot be adjudged guilty of contempt simply because of the alleged —but certainly not proved contention that his agents and servants were not punished because of an alleged failure to obtain jurisdiction of the court over them individually, where, nevertheless the court had obtained full and perfect jurisdiction of the Master is certainly untenable.

In this proceeding, the trial court has found more than ample cause to find the defendant unions guilty of contempt for the lawless and contemptuous conduct of their officers, business agents, servants, pickets and picket captains. The Supreme Court cannot disturb the findings of the trial judge on certiorari. *In re Gilliland*, 284 Mich. 604, at page 612, this Honorable Court, speaking through Justice Butzel, said:

> "On certiorari we do not pass on the weight of the evidence or the credibility of the witnesses. There being some evidence to support the finding of the trial judge, we cannot disturb it on certiorari. *Re Simons*, 248 Mich. 297."

QUESTION VI

Framed by Petitioners

It is respectfully submitted that the heading of Question VI in Petitioners' Brief, which apparently refers to the refusal of the trial court to strike out certain testimony, without there being one word in the record or in this question to connect it up with the matters set forth in Question VII, is but proof again of the vexatious and delaying nature of this proceeding by the Petitioners. It is submitted there is no relationship of the remotest kind with the heading of Question VI and anything else that appears in this entire record or Brief as appertaining to the question of picketing as an expression of free speech.

QUESTION VII

Framed by Petitioners

The petition and Order to Show Cause in this case, in addition to citing the Petitioners for contempt of court, ordered the defendant unions to show cause why the original injunction should not be amended to prohibit picketing altogether of plaintiff's place of business, in view of the continued and continuous illegal conduct, consisting of ridicule, intimidation, threats, coercion, lawlessness, violence, terrorism, damaging and destruction of the property of the plaintiff, its employees, customers and suppliers, and secondary boycotts, by the defendant unions, their officers, agents, pickets, picket captains and confederates, in spite of specific prohibitions thereof contained in the original injunction.

Throughout the weeks of testimony adduced from the witness stand by the scores of witnesses and even by the testimony of the witnesses for the defendants themselves —it was so overwhelmingly apparent that the defendant unions had made a sham and a travesty upon the terms "peaceful picketing" and the trial judge stated in his opinion (Exhibit I attached to Petition herein) that the continued acts of ridicule, intimidation, coercion, threats, vandalism, and violence,

> "finally reached a crescendo on the night of September 4th when hundreds of persons descended upon the premises among them 16 to 18 individuals equipped with steel helmets, resulting in the throwing of the so-called paint bombs referred to and the steel pellets and other conduct of an unseemly nature * * *."

and where the court, in his opinion, detailed how he had taken painstaking concern and precaution in his original injunction, to insure peaceful picketing, stated in his opinion (Exhibit I attached to the Petition herein):

> "How peaceful this became and what regard the defendants and others associated with them had for the court's injunction, is evidenced from the fact of the number of police required from time to time at the scene to maintain order."

The court's opinion further say:

> "This court is further satisfied from the record as made that, without the constant attendance of practically the full complement of police from the Schaefer Precinct Station, peaceful picketing is out of the question."

The court went on to say that he concludes and orders all pickets, business agents, and any other persons or unions to remove themselves "forthwith" from the location of plaintiff's business and desist from any picketing or other activity tending to interfere with the conduct of plaintiff's business.

In addition to this, the court stated in open court, on December 6, 1951, at the time of rendering his written opinion:

> "I am satisfied that without an army of police the peaceful picketing cannot progress." (Exhibit IV attached to plaintiff's answer to Petition.)

In his formal order, entered December 19, 1951 (Exhibit "J" of the Petition) the court stated:

> "The court is further satisfied, from the record as made, that without the constant attendance of

practically the full complement of Police from Schaefer Precinct Station, peacefully picketing of plaintiff's place of business and premises is out of the question and cannot progress; therefore, this court CONCLUDES AND HEREBY ORDERS all pickets, business agents, legal advisers and any other person or persons, union or unions, to remove themselves FORTHWITH, to-wit: INSTANTER, from the location of the plaintiff's place of business as set forth in the Bill of Complaint, and to CEASE AND DESIST from any picketing or other activity whatsoever tending to interfere in any manner directly or indirectly with the conduct of plaintiff's business or with any of plaintiff's employees, suppliers or customers, or any other person having lawful business with said plaintiff."

Therefore, it is respectfully submitted that after listening to voluminous testimony over a period extending from September 27 through November 27, 1951, the court finds as a *FACT* that because of the continued and continuous acts of lawlessness and violence, peaceful picketing cannot be conducted without "an army of police" or in other words, "practically the full complement of police of the Schaefer Precinct Station of the City of Detroit." For that reason he ordered picketing to cease instanter, and, let me add, after the lawlessness and violence practiced by the defendants, their officers, agents, employees, pickets and confederates had put plaintiff practically out of business! It was no "episodic" and "isolated" incident, but a continued, continuous, calculated campaign on the part of defendant unions to intimidate and terrorize plaintiff, its employees, customers and suppliers.

In the case of *Gompers v. Buck's Stove & R Co.*, 221 U. S. 418, cited by the Petitioners, Justice Lamar said (after stating that it was lawful to form unions for legitimate purposes) at page 439:

> "But the very fact it is lawful to form these bodies with multitudes of members, means that they have thereby acquired a vast power in the presence of which the individual may be helpless. This power when unlawfully used against one cannot be met, except by purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights and appealing to the preventive powers of a court of equity. When such appeal is made, it is the duty of the government to protect the one against the many, as well as the many against the one."

Justice Lamar also says:

> "The court's protective and restraining powers extend to every device whereby property is irreparably damaged or commerce is illegally restrained."

As in the court below, Petitioners argue that since picketing has been regarded and approved as a form of free speech that right must be protected irrespective of any other rights also protected by the Constitution. The mere statement of this proposition shows it utterly ridiculous fallacy.

Petitioners quote and rely on *Thornhill v. Alabama*, 310 U. S. 88, and *Carlson v. Calif.*, 310 U. S. 106. In both of these cases the only picketing which was permitted was PEACEFUL PICKETING. In view of the court's findings below that the defendants indulged in continued and continuous violence and that the only way peaceful picketing could possibly continue was by the constant presence of an army of police, these two cases absolutely support the contention of the plaintiff and are not authority for the contention of the Petitioners.

The attenetion of this Honorable Court is called again to the case of *Gilliland*, 284 Mich. 604, at page 612, where this Honorable Court said:

> " 'On certiorari we do not pass on the weight of the evidence or the credibility of witnesses. There being some evidence to support the finding of the trial judge, we cannot disturb it on certiorari.' *In re Simmons*, 248 Mich. 297."

The court below had presented from the witness stand mountains of evidence of the continued and continuous lawlessness and violence with which these Petitioners conducted the picketing at plaintiff's place of business and has made a finding which it is respectfully submitted this Court cannot disturb in this proceeding on certiorari.

In the case of *Meadowmoor Dairies v. Milk Wagon Drivers Union*, 312 A. L. R. 1200, even if the dissenting opinion of Justice Black said the right of the Illinois courts to enjoin violence is not denied in this case. The majority opinion written by Justice Frankfurter said:

> "We do not qualify the Thornhill and Carlson decisions. We affirm them. They involved statutes baldly prohibited all picketing near an employer's place of business. Entanglements with *violence* was *expressly out* of those cases. The statutes had to be dealt with on their face, and, therefore, we struck them down. Such an unlimited ban on free communication declared as the law of a state by a state court enjoys no greater protection here. * * *
>
> "But just as a state, through its legislature, may deal with specific circumstances menacing the peace by an appropriately drawn act (*Thornhill v. Alabama*, 310 U. S. 88) so the law of a state may be fitted to a concrete situation through the authority

given by the state to its courts. This is precisely the kind of situation which the Thornhill opinion *excluded* from its scope."

Then, Justice Frankfurter quoted from the Thornhill case:

> " 'We are not now concerned with picketing *en masse* or otherwise conducted which might occasion such imminent and aggravated danger * * * so as to justify a statute narrowly drawn to cover the preise situation giving rise to the danger.' "

In the Carlson case the United States Supreme Court said:

> "The power and duty of the State to take adequate steps to preserve the peace and protect the privacy, the lives and the property of its residents cannot be doubted."

Justice Frankfurter in the Meadowmoor case further said:

> "We would not strike out a statute which authorized the courts of Illinois to prohibit picketing when *THEY SHOULD FIND THAT VIOLENCE HAD GIVEN TO THE PICKETING A COERCIVE EFFECT WHEREBY IT WOULD OPERATE DESTRUCTIVELY AS FORCE AND INTIMIDATION.* Such a situation is presented by this record." (Emphasis in type and italics ours.)

Justice Frankfurter further says:

> "Freedom of speech and freedom of the press cannot be too often invoked as basic to our scheme of society. But these liberties will not be advanced or even maintained by the denying to the states with all their resources, *including the instrumentality of*

their courts the power to deal with coercion due to excessive violence. * * * (Italicizing ours.)

"If the people of Illinois desire to withdraw the use of the injunction in labor controversies, the democratic process for legislative reform is at their disposal. On the other hand, if they choose to leave their courts with the power which they have historically exercised, within the circumscribed limits, which this opinion defines, and we deny them that instrument of government, that power has been taken from them permanently. Just because these industrial conflicts raise difficulties, it is most important for us not to intrude into the realm of policy-making by reading our own notions into the Constitution."

The most pertinent paragraph of the decision in the Meadowmoor case reads as follows:

"And acts which in isolation are peaceful may be part of a coercive thrust when entangled with acts of violence. The picketing in this case was set in a background of violence. In such a setting it could justifiably be concluded that the momentum of fear generated by past violence would survive even though peaceful picketing might be wholly peaceful."

In the case at Bar the evidence and proofs went further, to-wit: that the police department of the City of Detroit found it necessary, after the violence and terrorism had reached the crescendo described by the trial judge, to maintain "practically the entire complement of police of the Schaefer Precinct Station," to keep order on the part of the defendant unions, their agents, pickets and confederates.

The attention of this Honorable Court is further drawn to *Goldfinger v. Feintuch*, 276 N. Y. 281, 11 N. E. 2d 910, 116 A. L. R. 477, which is to the like effect as the Meadowmoor case; *Fashion Craft v. Halpern*, 48 N. E. 2d page 1 (Mass.); *Retail Clerks Union v. Wisconsin Employment Relations Board*, 6 N. W. 2d 698, 149 A. L. R. 452; *Harper v. Brennan*, 311 Mich. 489,

the latter quoting from the United States Supreme Court that:

> "A state is not required to tolerate in all places and circumstances even peaceful picketing by an individual." (*The Wohl Case*, 316 U. S. 769.)

It is therefore respectfully submitted that in view of the findings of fact based upon testimony, declared by the trial judge, namely, that peaceful picketing is impossible without an army of police, this Honorable Court should dismiss this application for Writ of Certiorari as it is so obviously vexatious and for the purpose of delay.

It is further respectfully submitted that the stay of proceedings of that portion of Judge Moynihan's order denying stay of proceedings as far as resumption of picketing is concerned should be set aside by this Honorable Court in view of this Court's frequent pronouncements that it will not deny temporary injunctive relief to a plaintiff where it is so obvious that plaintiff's business will be irreparably damaged (*Midwest Properties Co. v. Local 622 A. F. L.*, 330 Mich. 478; and other recent Michigan cases of like import)—as it has been in this case, by the conduct and violence perpertrated by defendant union. A fortiori, where the trial court has taken volumes of testimony and has concluded and found as a fact that the con-

duct of defendant unions is not peaceful picketing but is on the contrary lawless and uncontrolled violence which only an army of police could subdue.

Respectfully submitted,

GEORGE BASHARA (SGD),
3302 Cadillac Tower,
Detroit 26, Michigan.

Dated at Detroit, Michigan, January 7, 1952.

CERTIFICATION

I, the undersigned, Clerk of the Circuit Court for the County of Wayne, in response to a written request filed by counsel for defendants and petitioners in the United States Supreme Court for certiorari do hereby certify that the foregoing is a true copy of the memorandum brief in support of petition for writ of certiorari in the Michigan Supreme Court and also a true copy of the brief filed in opposition to the petition for certiorari in the Michigan Supreme Court, the Highest Court of this state, and that said briefs were returned to the records and files of this court after the denial of certiorari. That nine (9) similar copies of the briefs filed in support and in opposition to the petition for certiorari in the Michigan Supreme Court have likewise been compared and delivered to counsel for petitioners in the United States Supreme Court.

Edgar M. Branigin,
Clerk of the Court.

CERTIFIED COPY "CHANCERY"

State of Michigan,
County of Wayne—ss.

I, Edgar Branigin, Clerk of the Circuit Court for the County of Wayne in Chancery, do hereby certify, that the above and foregoing is a true and correct copy of Certification of Briefs filed by Plaintiff and Defendant on Petition for Certiorari to the Supreme Court of State of Michigan entered in the above entitled cause by said Court, as appears of record in my office. That I have compared the same with the original, and it in a true transcript therefrom, and of the whole thereof.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court and County, at Detroit, this 25th day of June, A. D. 1952.

Edgar M. Branigin,
Clerk,
Leo K. Pierce,
Deputy Clerk.

Fee, $ .25
(Seal)

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IN THE

Supreme Court of the United States

No.....

HOTEL & RESTAURANT EMPLOYEES' BARTENDERS' INTERNATIONAL UNION, A. F. of L., HOTEL & RESTAURANT EMPLOYEES LOCAL UNION No. 705, CHEFS, COOKS, PASTRY CHEFS LOCAL UNION No. 234, MAX GAZAN, PEARL CRAIG AND GEORGE ASHER,
Petitioners,

vs.

RICHARDS-GREENFIELD, INC., a Michigan corporation,
Respondent

PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The highest court of the state denied a petition for certiorari without opinion, and the opinion of the lower state court is not reported.

STATUTORY PROVISIONS GIVING JURISDICTION TO THIS COURT

The jurisdiction of this court rests on Section 1257(3) of the Judiciary Act of 1948 (T. 28, Section 1257(3), U. S. C. A.) as follows: Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: (3) By writ of certiorari, where any title, right, privilege or immunity is specially set up or claimed under the Constitution. • • •

and

The 1st Amendment to the Constitution of the United States which provides: "Congress shall make no law • • • or abridging the freedom of speech or of the press." • • •

and

The 5th Amendment of the Constitution of the United States which provides: "No person • • • shall be compelled in any criminal case to be a witness against himself, or be deprived of life, liberty or property, without due process of law" • • •

and

The 14th Amendment of the Constitution of the United States which provides: "Nor shall any state deprive any person of life, liberty, or property without due process of law."

SUMMARY OF FACTS

Petitioner unions are members of the American Federation of Labor, and individual petitioners are union members. Respondent commenced suit in the Circuit Court for the County of Wayne, in Chancery, and obtained an injunction restraining peaceful picketing, except under limited conditions (R. 14). Thereafter, the chancery court, on petition of one Sidney Smith, signed an order to show cause naming the petitioner unions and the individual petitioners, Max Gazan and George Asher, as parties to appear before the court to show cause why they should not be punished for contempt for claimed violation of the court's injunction and to further show cause why they should not be enjoined from any picketing whatsoever (R. 27). No proof of the order to show cause was filed before hearing. Petitioner Pearl Craig was not named in the order to show cause (R. 27). Petitioners George Asher and Pearl Craig were not represented by counsel, and were not served with any papers in the proceedings (R. 69).

There is no dispute about the regularity or validity of a regular called strike and a bona fide labor dispute.

The Chancery Court, after taking testimony found the defendant unions guilty of contempt of court and imposed fines on each of the said unions. The court found the individual petitioners, Max Gazan, George Asher, and Pearl Craig, guilty of contempt of court and imposed fines and jail sentences on each of them. The court further broadened its injunction so as to restrain all picketing (R. 54-55).

None of the contempts for which fines and jail sentences were imposed transpired in open court or in view of the trial judge (R. 66).

This finding of petitioners guilty of contempt and the imposition of sentences and the restraint of all picketing was carried to the highest court of the state by the filing of a petition for certiorari requesting the appellate court to review the order and sentence of the chancery court, which petition set forth substantially the questions hereafter stated.

The testimony in the lower state court was not presented to the highest court of the state at the time of the petition for certiorari for the reasons that the record was too voluminous and it is not required under the state practice. Individual petitioners were witnesses at the hearing on the contempt proceedings but their conviction was for claimed injunction violation and not for their testimony.

The highest court of the state denied the petition for certiorari without opinion (R. 87).

It is the claim of the petitioners that respondent employed persons with criminal records to, first, assemble data for the obtaining of an injunction, and, second, after the injunction was obtained, to incite violence on the picket line for the basis of obtaining claimed injunction violations.

QUESTIONS PRESENTED

The following questions are presented:

(1) Is it a denial of due process to convict the defendants, or any of them, of contempt of court summarily and without trial when the alleged misconduct is not committed in open court?

(2) As to the petitioners George Asher and Pearl Craig, is it a denial of due process to convict these individual petitioners of contempt of court summarily where they have never been served with any process in connection with the particular hearing, nor have either of them been informed of the nature of the charges against them, had an opportunity to examine the witnesses who testified, nor were they represented by counsel?

(3) Is it a denial of free speech for the court to order the termination of all picketing and the removal of all union personnel from the vicinity of the premises where a bona fide labor dispute was in progress?

HOW QUESTIONS RAISED AND DISPOSED OF IN THE MICHIGAN COURT

Petitioner unions filed a motion for a more specific bill of particulars and to vacate the order to show cause before the hearing in the contempt proceedings. This motion was denied by the trial court. Petitioners Asher and Craig moved in open court, after trial, for dismissal of the charges against each of them because they had never been served with process in connection with the particular hearing, nor had either of them been informed of the nature of the charges against them, had an opportunity to examine the witnesses, or were they represented by counsel. The trial court commented:

> "That will be a matter, interesting as it may appear, for the Supreme Court to pass on."

The Supreme Court, the highest court of the state, denied certiorari without opinion. Likewise, the highest

court of the state, without opinion, confirmed the lower court's injunction restraining all picketing and removing all union members from the vicinity of the premises where a lawful strike was in progress.

REASONS FOR ALLOWANCE OF THE WRIT

(A) Appeals from convictions for contempt are a matter of discretion with the highest court of the state, and in this case petitioners are denied their constitutional rights without opinion of that court. This practice is a clear violation of the due process clause of the Federal Constitution, and the constitutional right of free speech, but the Michigan courts have consistently refused to recognize that fact.

(B) The protection ordained by the Federal Constitution thus becomes meaningless for Michigan citizens unless this court intercedes in the Michigan situation.

(C) The denial of all picketing nullifies the right to strike and is a matter of great public interest.

PRAYER

Wherefore petitioners and each of them pray that a writ of certiorari issue out of and under the seal of this Court directed to Supreme Court of the State of Michigan, the highest court of the state, or, in the alternative, to the Circuit Court for the County of Wayne, in Chancery, where the record is now lodged, after certiorari was denied by the highest court of the state without opinion,* demanding said court to certify and send to this Court a full and complete transcript of the record and proceedings in said cause to the end that said cause may be reviewed and determined by this court and that the judgment of the State Court be reversed and individual petitioners discharged from custody.

Respectfully submitted,

HUGH T. FRANCIS,
Counsel for Petitioners.

*The highest court of the state has returned the record of proceedings including briefs filed to the Clerk of the Trial Court and no part of the record remains with the Clerk of the Supreme Court.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Summary of Facts contained in the Petition for Writ of Certiorari is a complete statement of the case and is incorporated here by reference.*

ARGUMENT

I.

IT IS A DENIAL OF DUE PROCESS TO CONVICT THE DEFENDANTS OR ANY OF THEM OF CONTEMPT OF COURT SUMMARILY AND WITHOUT TRIAL, WHEN THE ALLEGED MISCONDUCT IS NOT COMMITTED IN OPEN COURT.

To preserve order in the court room for the proper conduct of business, the court must act instantly to suppress disturbances or violence or physical obstruction or disrespect to the court when occurring in open court. Under such circumstances, the court has the inherent power to act, and the punishment imposed by the court is due process of law.

The rule is altogether different, however, when the contempt charged, as in this case, occurs not in the presence of the court. In the case at bar, defendants were charged with the violation of an injunction issued by the court, and the acts complained of were not committed in the presence of the court. Under such circumstances, the court did not have such personal knowledge as would enable him to act without a hearing, and due process requires that the facts relied upon be established under oath

*See pages 3-4.

by others and the defendants be given an opportunity to meet the charges and to show cause why they should not be punished for contempt.

Cooke v. United States, 267 U. S. 517;
In re Savin, 131 U. S. 267, 33 L. Ed. 150, 9 Supreme Court Report 667.

The entire subject of due process of law in contempt proceedings was very thoroughly reviewed by the United State Supreme Court *in re Oliver*, 333 U. S. 257, in which the court said:

> "Except for a narrowly limited category of contempts, due process of law as explained in the Cooke Case requires that one charged with contempt of court be advised of the charges against him, have a reasonable opportunity to meet them by way of defense or explanation, have the right to be represented by counsel, and have a chance to testify and call other witnesses in his behalf, either by way of defense or explanation. The narrow exception to these due process requirements includes only charges of misconduct in open court in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and where immediate punishment is essential to prevent 'demoralization of the court's authority' before the public. If some essential elements of the offense are not personally observed by the judge so that he must depend upon statements made by others for his knowledge about these essential elements, due process requires, according to the Cooke Case, that the accused be accorded notice and a fair hearing as above set forth."

The State of Michigan has a statute governing procedure in contempt cases. The applicable section is 27.513 M. S. A. and Section 27.515 M. S. A.*

The Michigan Supreme Court, *in re Gilliland*, 284 Mich. 604, said:

> "The judge unquestionably has the right summarily to punish one for illegal practice of the law in his presence. However, when the proof on the charge of contempt for illegal practice partly depends upon practices which took place outside of the court and prior to the hearing, the contemner is entitled first to have proper charges preferred against him so that he may answer them and prepare his defense. This has not been done, and, therefore, the conviction as to this contempt is set aside."

To the same effect *in re Ventchell*, 279 Mich. 690.

In re NaLepa, 298 Mich. 310, the court stated as follows:

> "We have carefully examined the record and briefs in this cause and find that no charge was filed against the petitioner. He was not informed of the nature of the charge against him. He was not served with any process or given an opportunity to

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*27.513 MSA: Same; misconduct not in the presence of court.

Section 3. When such misconduct is not so committed, the court shall be satisfied by due proof, by affidavit of the facts charged, and shall cause a copy of such affidavit to be served on the party accused, a reasonable time to enable him to make his defense except in cases of disobedience to any rule or order requiring the payment of money, and the disobedience of any subpoena.

*27.515 MSA: Same; order to show cause. Attachment to arrest.

Section 5. In all cases other than that specified in the last section, the court shall either grant an order on the accused party to show cause at some reasonable time, to be therein specified why he should not be punished for the alleged misconduct, or shall issue an attachment to arrest such party, and to bring him before such court to answer for such misconduct.

defend himself. In the case at bar, a part of the transaction charged as contemptuous transpired in the immediate view and presence of the court, but other transactions occurred outside the hearing of the court. The admitted and known facts committed in the presence of the court were not such as would constitute a violation of III Compiled Laws 1929, Section 13.911 (M. S. A. 27.512), nor was the procedure such as to comply with III Compiled Laws 1929 (M. S. A. 27.513). Under the facts, it must be held that petitioner was deprived of his liberty without due process of law. The order of contempt must be set aside and vacated, and petitioner discharged without prejudice."

To the same effect *in re Smilay*, 235 Mich. page 156.

From the above, it is clearly established that it is a denial of due process to convict the petitioners or any of them of contempt of court summarily because each and every act and circumstance on which the charge of contempt of court is based occurred elsewhere than in the presence of the court.

II.

AS TO PETITIONERS GEORGE ASHER AND PEARL CRAIG, IT IS A DENIAL OF DUE PROCESS TO CONVICT THESE INDIVIDUAL PETITIONERS OF CONTEMPT OF COURT SUMMARILY WHERE THEY HAVE NEVER BEEN SERVED WITH ANY PROCESS IN CONNECTION WITH THE PARTICULAR HEARING, NOR HAS EITHER OF THEM BEEN INFORMED OF THE NATURE OF THE CHARGES AGAINST THEM, HAD AN OPPORTUNITY TO EXAMINE THE WITNESSES WHO TESTIFIED, NOR WERE THEY REPRESENTED BY COUNSEL.

Defendant Pearl Craig was not named as a party defendant in the Bill of Complaint filed by the complainant, and no process was therefore issued against her. She was not named in the petition for the order to show cause, and no order to show cause was issued requiring her to appear in court and show cause why she should not be punished for contempt of court. The order to show cause which was issued in the case was not served upon her. She was not made a party to this cause by the plaintiff or by the court, and her only participation in the case was her appearance at the hearing as a witness for the defendants.

Not being a party to the proceedings, she had no right to be represented therein by counsel, and she had no counsel. She had no right to examine witnesses, and she did not do so. Not being a party to the cause, she had no right to offer testimony and she did not offer testimony in her behalf. She appeared in the proceedings merely as a witness called by the defendants in their behalf, and all proceedings in the case were conducted to their ultimate conclusion without her even being apprised that she was in any manner personally involved. Nevertheless, at the conclusion of the hearing, she was adjudged guilty of contempt of court by the trial judge, and a sentence of a fine

and imprisonment was pronounced upon her. That such proceedings were not due process under the *in re Oliver* and other cases herein cited is, we contend, a certainty, and the enforcement of the judgment against the person and property of Pearl Craig, who was not designated as a party, nor made a party by service of process, violates the due process clause of the Fifth and Fourteenth Amendments of the Constitution of the United States as this court found in the case of *Carl A. Hansbery, Nannie L. Hansbery, et al. v. Anna M. Lee, Edward L. Govanus, Esther Govanus, et al.*, 311 U. S. 32.

Defendant George Asher was named as a defendant in the Bill of Complaint. He was not served with process and did not appear personally or by counsel and the Court, therefore, did not acquire jurisdiction over him.

While he was named as one of the defendants in the order to show cause why the defendants should not be punished for contempt of court, the order to show cause was never served upon him, and he did not appear in court in response thereto, nor was he represented by counsel. His case parallels that of Pearl Craig in that the entire proceedings were had without him participating as a defendant and without the court obtaining jurisdiction over him personally. He appeared and testified in the cause in behalf of the other defendants, and, as in the case of Pearl Craig, was adjudged guilty of contempt by the trial court and ordered to pay a fine and sentenced to prison. Such adjudgment violates the due process clause of the Fifth and Fourteenth Amendments of the Constitution of the United States.

Cole v. State of Arkansas, 333 U. S. 196.

III.

IT IS A DENIAL OF FREE SPEECH FOR THE COURT TO ORDER THE TERMINATION OF ALL PICKETING AND THE REMOVAL OF ALL UNION PERSONNEL FROM THE VICINITY OF THE PREMISES WHERE A BONA FIDE LABOR DISPUTE WAS IN PROGRESS.

The basic right to picket, to advise customers of the relationship between employer and employee, to attempt to induce customers not to patronize, to publicize the dispute, and similar rights are established in *Thornhill v. Alabama*, 310 U. S. 88, under the right of free speech as constitutionally guaranteed. To the same effect of the case of *Carlson v. California*, 310 U. S. 106.

In *Cafeteria Employees v. Angelos*, 320 U. S. 293, the rights of workers engaged in a bona fide labor dispute are outlined in greater detail. The following language of Mr. Justice Frankfurter is pertinent to the present question:

> "And to use loose language or undefined slogans that are part of the conventional give and take in our economic and political controversies—like 'unfair' or 'fascist' is not to falsify facts."

And, finally as follows:

> "The present situation is thus wholly outside the scope of the decision in the *Milk Wagon Driver Union v. Meadowmoor Dairies*, 312 U. S. 287, 85 L. ed. 836., 61 Sup. Ct. 552, 132 A. L. R. 1200. There we sustained the equity power of a state because the record disclosed abuses deemed not episodic and isolated but on the very texture and process of the enjoined picketing, but we also made clear that the power to deny what otherwise would be lawful picketing derives from the power of the states to prevent future coercion. Rights of free speech in the future cannot be forfeited because of disasso-

ciated acts of past violence. 312 U. S. at 296, 85 L. ed. 842, 61 S. Ct. 552, 132 A. L. R. 1200. Still less can the right to picket itself be taken away merely because there may have been isolated incidents of abuse falling far short of violence occurring in the course of that picketing."

The State of Michigan has provided by statute acts which shall constitute unlawful conduct in the process of picketing. That statute is Statute 17.454 (10.5 M. S. A.)* and that statute specifically provides that:

> "Provided that picketing to the extent that the same is authorized under constitutional provisions shall in no measure be prohibited."

The Supreme Court of the State of Michigan has held that peaceful picketing by members of a labor union is within the constitutional guarantees of free speech.

Standard Grocer Company v. Local 406, 321 Mich. 276;

Silkworth v. Local 575, AFL, 309 Mich. 746;

Lafayette Dramatic Productions v. Ferentz, 305 Mich. 193.

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*17.454 (10.5 MSA). Mass picketing of place of employment, or unlawful treatment or force obstructing work, ingress, egress, or use of public way declared unlawful; picketing of residences barred; Sec. 9F. It shall be unlawful (1) for any person or persons to hinder or prevent by mass picketing, unlawful threats or force, the pursuit of any lawful work or employment, (2) to obstruct or interfere with entrance to or egress from any place of employment, (3) to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance, or, (4) to engage in picketing a private residence by any means or method whatever: provided that picketing to the extent that the same is authorized under constitutional provisions shall in no measure be prohibited. Violation of this section shall be a misdemeanor and punishable as such. (CL 48, 423, 9F.)

The injunction in this case is one in which the court set forth his idea of what peaceful picketing should consist of in this particular labor dispute. We respectfully submit that while the court had the right to punish for violating the injunction, he did not have the right to terminate peaceful picketing.

Testimony in the contempt proceedings shows that just prior to the strike, respondent employed two persons with criminal records, and it is the claim of petitioners that these men were employed to, first, assemble data for the obtaining of an injunction, and, second, after the injunction was obtained, to incite violence on the picket line for the basis of obtaining claimed injunction violations. One was William Thompson, who carried the title of Assistant Manager, and the other was Ray Dollinger, who acted, in part, as a photographer. Petitioners further claim that it was the deliberate intent and purpose of respondent, as shown by the action of these two men, to prevent peaceful picketing of their premises, and to deliberately provoke incidents in an attempt to incite violations of the injunction. Counsel for respondents must admit that Thompson left the employment immediately after the trial. Counsel must further admit that subsequent to the hearing, Thompson was arrested, and his arrest was reported in three of the Detroit papers. A copy of one of these newspaper articles is attached hereto as an addendum to this brief. We concede that newspaper articles are not conclusive evidence. We do contend, however, that notwithstanding the fact that there was other evidence on which the trial judge might have found the defendants guilty, that the testimony of these two men was improperly considered, and when properly considered, points to a scheme to cause violence for which the individual defendants were convicted and sentenced to jail.

CONCLUSION

We have shown that there is involved in this petition a question of the fining and imprisonment of petitioners for the alleged contempt of court not committed in the presence of the court in a proceeding in which some were not parties, in violation of the due process clause of the Constitution of the United States, and the right to enjoin peaceful picketing in a bona fide labor dispute contrary to the right of free speech, as provided in the First Amendment of the Constitution, and contrary to the decisions of this Court.

Therefore, we respectfully urge that this court exercise its discretion and allow the writ and on hearing reverse the order of the lower court.

Respectfully submitted,

HUGH T. FRANCIS,
Counsel for Petitioners.

'Record Liar' Jailed by FBI

William Thompson, 37, of 8245 Twelfth, whom Recorder's Judge Paul E. Krause at one time called the "biggest liar I ever saw," was under arrest today for passing illegal money orders in Spartansburg, S. C.

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Federal handwriting experts said the signatures were Thompson's.

On March 1, Krause tongue-lashed a jury for freeing Thompson on a charge that he sold $10 warranties on television picture tubes and charged the responsibility to his boss.

Later, as manager of a clothing store, he reported that he was robbed of $1,000 and several money orders.

Detective Kenneth Sylvester of the bad check detail said he would either be returned to Detroit or prosecuted by federal authorities on the money order offense.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

No. 127

HOTEL & RESTAURANT EMPLOYEES' BARTENDERS' INTERNATIONAL UNION, A. F. of L., HOTEL & RESTAURANT EMPLOYEES LOCAL UNION No. 705, CHEFS, COOKS, PASTRY CHEFS LOCAL UNION No. 234, MAX GAZAN, PEARL CRAIG AND GEORGE ASHER,
Petitioners,

vs.

THE RICHARDS-GREENFIELD, INC., a Michigan corporation,
Respondent

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

SUMMARY OF FACTS

Respondent respectfully takes exception to the summary of facts stated in Petitioners' Brief. Petitioners are Hotel & Restaurant Employees' Bartenders' International

Union, A. F. of L., Hotel & Restaurant Employees Local Union No. 705, Chefs, Cooks, Pastry Chefs Local Union No. 234, A. F. of L. and of the individual petitioners Max Gazan, is a business agent of Local No. 234, and the other two petitioners, George Asher and Pearl Craig are respectively, business agent and member and a leading picket of Local No. 705.

Petitioners went out on strike and respondent filed its bill of complaint in the Circuit Court for the County of Wayne, Michigan, alleging violence, mass picketing and other violations of State Law (R. 6, 42) and asked that the defendants therein, including all the petitioners herein, be enjoined and restrained from the unlawful conduct set out in said bill of complaint. On July 26, 1951, an Order to Show Cause was issued, returnable July 30, 1951, why an injunction should not be issued as prayed for in the bill of complaint. Considerable discussion was had between Court and counsel and the matter continued to August 2, 1951, at which time a full, extensive and exhaustive hearing and argument by counsel for both sides was had; and between that date and August 8, 1951, considerable discussion was had between Court and counsel as to the contents and form of the proposed injunction; and again on August 8, 1951, Court and counsel took painstaking care to draft an order defining the picketing which was permitted by the Court within legal limits. The Injunction Order was finally signed August 8, 1951, and was approved by all parties in the presence of all petitioners herein who were active participants (R. 14, 43, 44 and 45).

Thereafter, commencing on the same day and "hardly before the ink had dried on the signature of the Circuit Judge on the temporary injunction", the defendants therein and all the petitioners herein began to violently, contemptuously, wilfully, wantonly violate every letter and

spirit of the injunction (R. 18, 19). This conduct continued and increased in ferocity until it culminated on September 4, 1951 in an orgy of lawlessness, breaches of the peace, violence, repeated assaults, repeated damage of property of the respondent and of the general public, and rioting which required nearly all the police of Schaefer Precinct to quell and control. Even during the nearly three months of hearings while the testimony was being taken on the Order to Show Cause why petitioners herein and other defendants should not be punished for contempt of Court for violation of said injunction, it required "practically the entire complement of the police force of the Schaefer Precinct Police Station of the City of Detroit" to bring about and maintain even a semblance of order (R. 17-26, R. 46, 49) as the learned trial judge *found as a fact from said testimony.*

Pursuant to respondent's Petition for Order to Show Cause, the Court ordered all defendants, including the petitioners, to show cause on September 14, 1951 "why the defendants and their individual officers, agents, employees, pickets and confederates should not be punished for contempt of court in disobeying and violating the injunction" and "why the said temporary injunction should not be so modified and amended so as to enjoin and restrain in addition to the other matters enjoined and restrained in the original temporary injunction, the defendants and agents, officers, employees, pickets and confederates from any picketing whatever" and other relief.

The Order to Show Cause specified that it be served upon said defendants, "*their officers, agents, employees, pickets and confederates* by serving a copy thereof upon the offices of said defendants Hotel & Restaurant Employees' Local Union No. 705, and the Chefs', Cooks', Pastry Chefs' Local Union No. 234, and *upon the office of*

their attorney, Leon Cousens, Esquire, on or before midnight, September 10, 1951" (R. 27, 28). Service of the Orders to Show Cause and the supporting sworn petition and affidavits was made exactly as the order directed. (Italics ours.)

Upon the return date of said Order to Show Cause, the defendant Unions and a host of business agents, representatives, and members *including each and every one of the Petitioners herein appeared in response to said Order to Show Cause, and remained in open Court throughout the nearly three (3) months of hearings,* consulting with the various attorneys representing them and said Unions, took the witness stand to deny the charges against them, and had every opportunity possible available to them to produce, and they did produce, witnesses in their behalf (R. 61-63).

We respectfully refer this Honorable Court to the comprehensive Opinion, filed by Circuit Judge Joseph A. Moynihan, the Trial Judge (R. 42-53) for a full statement of the facts of this controversy.

Respondent emphatically rejects the right of the petitioners herein, to add matters in their brief which were wholly outside the record, and which obviously occurred, if at all, after this hearing was closed, *and were entirely unrelated to it in any manner.* We respectfully refer to the last paragraph of the petitioners' Summary of Facts, on page 4, and statements on page 17 of their brief, and the highly improper photostatic copy of an alleged newspaper article.

On July 5, 1952, after a copy of Petitioners' Brief in this Court and cause was served, we wrote Petitioners' Counsel with reference to such extraneous matter as follows:

> "Even more shocking to me has been your inclusion of the matters contained in the Motion for Re-

hearing which you but recently made before Judge Moynihan, and which was peremptorily denied, to-wit: the reference to William Thompson, etc. Aside from the fact that Judge Moynihan denied your request for rehearing most emphatically, yet you have included it in your Brief, whereas it appears nowhere in the Transcript of Record, and certainly you omitted making the record of it, at your own request. * * * I must say to you therefore, * * * unless you withdraw your Petition for Writ of Certiorari and Brief in support thereof from the United States Supreme Court, Docket No. 127, *as you have heretofore filed it,* and advise me of that fact by July 15, 1952 I shall at that time move to have your Transcript of Record and Petition for Writ of Certiorari and Brief in support thereof, Docket No. 127 of the United States Supreme Court, stricken from the Docket on the grounds set forth in this letter."

Mr. Francis replied to this portion of our letter, under date of July 11, 1952, as follows:

"In my opinion, the reference to Thompson in the addendum of the brief which makes no reference to the petition for consideration, is a matter which would be considered more on the merits than on the petition for certiorari, if certiorari were granted, and at which time I understand either party could file an additional brief. Regardless of these facts, if you desire to stipulate the proceedings for reconsideration I will join in such a stipulation with you for what it is worth."

To this letter we replied, under date of July 18, 1952:

"However, the straw which broke the camel's back was the entirely improper matter contained in your United States Supreme Court Brief, going completely outside the record, on page 17 of your Brief, and the entirely and absolutely inexcusable appendage of an alleged photostatic copy of a news-

paper article of the Detroit Times, dated Monday, March 31, 1952. This was matter which had been alluded to in your Motion for Rehearing before the Honorable Joseph A. Moynihan. At your own insistence, we did not include this as a part of the record and I went along with you. Then, when you included this material in your Brief, in view of the circumstances I have just outlined, I considered that most improper and of such a nature that it is absolutely improper to present it to the United States Supreme Court. The record had been certified by our stipulation and by Judge Moynihan. When you included in your Brief matters which were specifically left out of the record at your own request—that is what I referred to and mean by being 'absolutely improper'. * * *

"I therefore, respectfully request that you withdraw your Brief from the Supreme Court and substitute therefor the same brief or any other brief you care to file, without the objectionable material I have alluded to."

Under date of August 1, 1952 we wrote the Honorable Charles Elmore Cropley, Clerk of the Supreme Court of the United States, as follows:

"Aug. 1, 1952,

Honorable Charles Elmore Cropley
Clerk of the Supreme Court of the United States
Washington 13, D. C.

Attention: Mr. E. P. Cullinan, Assistant

Re: *Hotel & Restaurant Employees & Bartenders International Union vs. Richards Greenfield Inc., No. 127 (October Term 1952).*

Dear Sir:

This will acknowledge receipt of your esteemed letter dated July 28, advising that your office received printed copies of a reproduction of type-

written briefs filed in the Supreme Court of Michigan by both parties, but that no transmittal letter explaining the purpose accompanied said briefs.

I wish to advise you that the original agreement between the parties was that the Petitioner for Writ of Certiorari should include these briefs as part of the record before the Supreme Court of Michigan. However, in making up the record, Mr. Hugh Francis, attorney for petitioners, failed to include these briefs as agreed. When I called this matter to his attention, he had them printed up and sent to your office, apparently without enclosing a transmittal letter to explain them as a part of the Record in the Michigan Supreme Court, as agreed upon by the parties.

I, therefore, respectfully request that these briefs be added to and considered a part of the entire Record before the Supreme Court of Michigan.

I, also, have directed the attention of Mr. Francis to the printed brief which he forwarded to your office as his brief on the petition. He has included in that brief highly improper matter which is completely and absolutely outside the Record, to-wit Photostatic copy of an alleged newspaper copy allegedly appearing in a Detroit paper MONTHS AFTER the hearing and the record in this case. I have demanded of him to withdraw this brief, otherwise I would be compelled to request the United States Supreme Court to expunge it from the record of this case in your office. I am awaiting Mr. Francis' reply. Trusting I have fully answered your inquiry, and wishing to thank you for this and past courtesies, I am,

Respectfully yours,

George Bashara.

GB/jm"

When respondent's vehement objection to this matter was pointed out to Counsel for Petitioners as aforesaid, he agreed to attempt to withdraw the brief with the improper matter and to substitute a proper brief therefor. Counsel for both parties wrote a letter to the Clerk of this Honorable Court, requesting the privilege of withdrawing said brief, as follows:

"September 5, 1952

"With reference to the brief filed by the petitioners in the above entitled cause, counsel for both parties are agreeable to stipulating to substitute the identical brief, filed by the petitioners, less the matters objected to by counsel for respondent in the letter to you under date of August 1, 1952, namely, the extraneous matter not included in the record as filed.

"We would both like to know from you whether the substituted brief may be filed by our joint stipulation *nunc pro tunc*, without affecting the Court's jurisdiction to consider the petition.

"We respectfully await your kind early reply.

"Yours very truly,

"(signed) Hugh Francis,
Attorney for Petitioners.

"(signed) George Bashara,
Attorney for Respondent."

However, the Clerk of this Honorable Court informed us that the objectionable brief had already been distributed to the Honorable Justices of this Court, in the following letter, dated Sept. 8, 1952.

"I have your letter of the 5th instant, relative to brief for the petitioner. The papers already filed have long since been distributed to the Justices and

it would not at this late date be possible to physically withdraw them and to file a new brief *nunc pro tunc*. However, a substituted or amended brief could be filed and I do not believe that the jurisdiction of the Court would be affected. The stipulation referred to, if printed in the amended brief, would show the occasion for the substitution.

Yours truly,

(Signed) Charles Elmore Cropley, Clerk
By B. H. W., Deputy."

We respectfully ask the Court's pardon for going into detail as to the improper material included in Petitioners' Brief, but we felt constrained to do so in explanation of our delay in filing the Respondent's Brief. However, as we are advised by the Clerk that the Brief containing improper matter had already been distributed to the Honorable Justices, it was felt that this explanation has been necessary.

Since, therefore, the objectionable matter has been brought to the attention of the Honorable Justices of this Court, Respondent is constrained to inform this Honorable Court that Mr. Hugh Francis, petitioners' present counsel, presented a Motion for Reconsideration to the Honorable Circuit Judge Joseph A. Moynihan, the Trial Judge, based upon the same subsequent, improper and irrelevant matter contained in the newspaper articles as the photostat attached to *petitioners'* brief heretofore filed in this Honorable Court and cause. That matter was thoroughly argued before the Trial Judge, on May 8, 1952, and *while this present Petition was pending in this Honorable Court.* The following is a true and correct transcript of the opinion and decision of the said Trial Court, Circuit Judge Joseph A. Moynihan on the "Motion for Reconsideration":

"OPINION OF THE COURT

STATE OF MICHIGAN—In the Circuit Court for the County of Wayne, In Chancery.

Richards Greenfield, Incorporated, a Michigan corporation, Plaintiff,

v.

Hotel & Restaurant Employees' & Bartenders' Internat'l Union, AFL, Defendants.

No. 477-853.

Before the Honorable Joseph A. Moynihan, Circuit Judge

Appearing: George Bashara, Attorney for Plaintiff; and Hugh Francis, Attorney for Defendants.

May 8, 1952, at 11:00 A. M.

The Court: This is a matter for reconsideration of the Court's determination on an Order to Show Cause for violation of the injunction, heretofore issued by the Court in this cause.

The original order to show cause for violation of the injunctive process of this court took approximately eight to ten weeks of the court's attention; numerous witnesses were sworn on behalf of both the plaintiff and the several defendants. Among them one witness whom defendants now claim to have been prosecuted for criminal activities, one William Thompson.

It appears from the argument of counsel for the defendants at this point that because of some criminal activities of Thompson, that therefore the action of this court in finding several of the defendants guilty of the violation of the Court's injunction, should be held for naught.

The record as made in this case is replete with testimony from numerous witnesses, in whom the court could place credence, of the violation of that injunction by numerous defendants and their agents; in fact, we can leave all of Thompson's testimony out of this record, and I can say now that I did not take a great deal of what he had to say in testimony, at face value, because after some thirty years on the bench a judge gets to know and understand human nature quite thoroughly, and in watching the actions of witnesses, particularly in this case, on the stand, with more emphasis on Thompson's testimony when he finally had to resort to the Court's protection and advice; that he did not have to testify to matters that might incriminate himself, that at that moment any testimony he might give was the subject of indeed very close scrutiny, with its consequent decision by the Court that he was not entirely worthy of belief. However, we don't have to worry very much about Thompson.

As heretofore adverted to, there were many witnesses from reputable business concerns, as people who were the patrons of the premises in question and who were the subject of activities on the part of the defendants and their agents and employees, and the testimony of these purveyors and patrons was sufficient to support, and is sufficient at this time to support the findings as made.

It appears to the Court in this instance that this motion for reconsideration, is filed, and I think the Court is safe in making this finding,—to relieve the several defendants whom this court found to be flagrantly guilty in their violation of the Court's order, and attached a jail sentence to the disposition of this case.

I think it is safe for me to draw the conclusion that if this court was to remit the jail portion of the order, then we hear no more of this case, which at the moment I am advised is the subject of con-

sideration by the Supreme Court of the United States.

Another portion is, of course, that the Court restore that part of the order which recited the fact that in view of the conduct of the Union and other defendants in this action, that no longer could there be possibly peaceful picketing at the scene of the place of business of the plaintiff.

In the court's finding on the subject of revoking a part of the order with respect to the permission of peaceful picketing, the Court used the language and feels even at this time it was justified in making that finding, that when it took practically the entire complement of the police force of the Schaefer Precinct Station of the City of Detroit to preserve peace and order, that it ceased to become peaceful, and the Court does not feel justified in view of that, at this time of changing that finding.

In going over this matter that has been argued at length this morning by counsel for the defendants and counsel for the plaintiff, the court finds nothing in this petition at this time to warrant the relief prayed for in the petition as filed.

It follows that the same will be denied.

Mr. Francis: I could not follow from your Honor's statement there, whether or not you had remitted the jail sentence part.

The Court: No, I have not. I said I took it from the argument made, that if I was going to remit that portion of my order, that we would hear no more of this case. If I did not make myself clear, Mr. Francis, I will say now, that there will be no change in the order as made. It stands just exactly as I heretofore made it.

I, Aaron A. Silberblatt, official court stenographer, do hereby certify that I reported stenographically the proceedings in the above entitled cause as hereinabove set forth; that the same was taken down by me in shorthand notes, and by me reduced to writing, and that the foregoing as is hereinabove set forth, is a true and a correct transcript of the same.

Aaron A. Silberblatt,
Official Court Stenographer.

Dated at Detroit, Michigan,
June 12th, 1952."

This motion to Reconsider and Judge Moynihan's disposition of it were not included in the printed record filed in this Honorable Court *at the specific request of Counsel for Petitioners.* For this reason respondent made demand upon Petitioners to expunge said objectionable matter from their brief.

ARGUMENT

So that we may not burden the Honorable Justices with repetition, the indulgence of this Honorable Court is respectfully requested to have "PLAINTIFF'S MEMORANDUM BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI" (pages 15-41) of the "Printed Reproduction of Typewritten Briefs filed in the Michigan Supreme Court by the Petitioners and the Respondent in the State Court Petition for Certiorari," printed copies of which were filed as Exhibits with the Clerk of this Honorable Court *as and for the brief of the Respondent* in this Honorable Court.

CONCLUSION

It is therefore respectfully submitted that NONE of the constitutional rights of the petitioners have been in any manner whatever violated; on the contrary they had a full, complete, exhaustive hearing contained in thousands of pages of typewritten transcript of testimony adduced over a period of three months from scores of witnesses, with every imaginable opportunity to bring in whatever possible testimony they had, to attempt to justify their lawless, violent, wilful, wanton, riotous contempt not only of the injunction of the Honorable Circuit Court for the County of Wayne, Michigan, but disregard of, and contempt for, every National and State Law and the Constitutional Rights of the respondent. The Petitioners have not pointed out, nor can they point out, a single act of abuse of discretion by the Trial Judge who gave three months of valuable court time to permit Petitioners to show cause why they should not be punished for their flagrant contempt of his injunction and of all law.

It is therefore, respectfully submitted that this Petition should be denied with costs to the Respondent.

Respectfully submitted,

GEORGE BASHARA,
Attorney for Respondent,
3302 Cadillac Tower,
Detroit 26, Michigan.

Dated: September 15, 1952.

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FILE
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CHARLES ELMORE

No. 127

IN THE

Supreme Court of the United States

OCTOBER TERM, 1952

HOTEL & RESTAURANT EMPLOYEES' BARTENDERS' INTERNATIONAL UNION, A. F. of L., HOTEL & RESTAURANT EMPLOYEES LOCAL UNION No. 705, CHEFS, COOKS, PASTRY CHEFS LOCAL UNION No. 234, MAX GAZAN, PEARL CRAIG AND GEORGE ASHER,
Petitioners,

vs.

RICHARDS-GREENFIELD, INC., a Michigan corporation,
Respondent

REPLY BRIEF OF PETITIONER

HUGH FRANCIS,
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Detroit 26, Michigan.

Interstate Brief & Record Co., 642 Beaubien St., Detroit 26, Michigan

IN THE

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No. 127

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Petitioners,
vs.
RICHARDS-GREENFIELD, INC., a Michigan corporation,
Respondent

REPLY BRIEF OF PETITIONER

This brief is filed because of the reference of counsel for respondent to a petition for reconsideration and the inclusion in his brief (10 to 13) of the opinion of the lower court in respect thereto. No order was entered in respect to the petition for reconsideration and under the governing State

Court rules and the lower County Court rules, the petition was considered as abandoned when an order was not signed as required by court rule. (*Michigan State Court Rule 19, Sec. 5)—(**Local Court Rule, Wayne County, Michigan, 7, Subdivision (k).)

On page (5) of respondent's brief quotation is made from a letter of July 11, 1952, received from counsel for petitioner. For some reason respondent's counsel did not elect to give the entire contents of the paragraph from which the quotation was made, the omitted portion being "As to your reference to reconsideration proceedings, you are, of course, aware of the fact that no order was ever presented to the Circuit Judge for signature and that no such order was ever prepared or noticed for hearing and that under the Michigan Circuit Court rules if such an order is not presented within ten days the proceedings are considered as abandoned." * * * "Regardless of these facts, if you desire to stipulate the proceedings for reconsideration I will join in such a stipulation with you for what it is worth."

In respect to the State Court briefs filed as exhibits, attention is called to respondent's brief (7) where claim is made of an agreement to file the briefs as part of the rec-

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*State Rule 10, Section 5:

Whenever an order has been granted in any proceeding it shall be noticed and presented for signature within 10 days after the granting of same. If such order is not so presented or time extended by the court, it will be considered as abandoned, and a new application for such order may be made only to the judge granting the original order, or his successor, upon such terms as may appear just and equitable.

**Local Rule 7, Subdivision k:

Whenever an order has been granted in any chancery proceeding, it shall be presented for signature within ten days after the granting of the same. If such order is not so presented or time extended by the court, it will be considered as abandoned and a new application for such order may be made only to the judge granting the original order, upon such terms as may appear just and equitable.

ord. On the contrary, petitioners' counsel advised counsel for the respondent that these briefs could not be filed as part of the record and would be filed separately. Respondent's counsel was later so advised by the Clerk of this court but did not elect to make reference thereto in his brief. In the same letter of counsel for petitioners from which counsel for respondent quoted, the following also appears: "I never stated to you that these briefs would be part of the record. What I did state to you was that in my opinion, the briefs are not a proper part of the record filed in the United States Supreme Court but could be filed separately and this I believe you will find to be true if you check the United States Supreme Court Practice."

The letter of September 5, 1952, referred to on page (8) of respondent counsel's brief was on the stationery of respondent and written in his office at his request and on his representation that in his opinion such a request could be granted. Counsel for petitioner at that time stated that in his opinion the request contained in the said letter of September 5th did not conform to the practice before this court and in order to avoid unnecessary detail being presented here that he, counsel for petitioner, would file an amended brief. This position is consistent with that taken by the clerk of this honorable court referred to on page (9) of respondent's brief: "However, a substitute or amended brief could be filed and I do not believe the jurisdiction of the court would be affected."

We regret the burdening of this court with matters which are not material to the constitutional questions raised. As previously stated were it not for counsel's reference to the abandoned petition for reconsideration this brief would not be filed.

Respectfully submitted,

HUGH FRANCIS,

Counsel for Petitioners.